

United States Bankruptcy Court  
District of Massachusetts  
Western Division

_____	)	
In re:	)	
	)	Chapter 7
Carl J. Hannigan,	)	Case # 02-46969 - JBR
	)	
Debtor	)	<b>NOT FOR PUBLICATION</b>
_____	)	

MEMORANDUM OF DECISION

This matter is before the Court on the Debtor's Motion to Partially Avoid a Judicial Lien and the Creditor's Motion for Relief from the Automatic Stay. For purposes of the evidentiary hearing, Carl J. Hannigan (the "Debtor") conceded the existence and validity of the judicial lien held by Robert R. White (the "Creditor"), but alleges that it impairs his homestead exemption to the extent of \$57,200.00. The Creditor disputes the Debtor's valuation of the subject property and alleges that his lien does not impair any part of the homestead exemption.

Background

The Debtor filed a voluntary Chapter 7 petition on November 15, 2002 (the "Petition Date"). On October 31, 2002, a judicial lien for \$95,000.00 was issued by the state court and it was recorded with the Registry of Deeds on November 18, 2002. As of the Petition Date, the Debtor concedes that the amount of the claim secured by the judicial lien equaled \$95,000.00. The Debtor alleges that the current amount of the claim is \$128,450.00. The Creditor maintains that it totals \$157, 838.78 as of June 9, 2005.

The property to which the lien attaches is a single-family dwelling located at 106 Haynes Road, Townsend, Massachusetts (the "Property") which consists of two parcels totaling approximately 34.36 acres with 200 feet of frontage on Haynes Road. The house sits on the front

parcel. The back parcel is approximately 33 acres in size and is raw land. It is in compliance with the zoning regulations in Townsend. In July 2003, the Court limited the Debtor's homestead exemption to \$135,000.00, the amount claimed on his Schedule C in his initial bankruptcy filing. [Docket # 42 and #43] *In re Hannigan*, 409 F.3d 480 (1st Cir. 2005). There are no other encumbrances on the Property.

The Court held an evidentiary hearing to determine the value of the Property. Both parties provided testimony regarding the value of the Property.

#### Discussion

“Application of §522(f) . . . mandates that the . . . judicial lien be avoided to the extent all of the liens on the Debtor's property, plus the Debtor's exemption, exceed the property's value.” *In re Bozzelli*, 227 B.R. 770, 772 (Bankr. E.D.Pa. 1998). The Debtor “bears the burden of proving all the elements required for avoiding . . . lien pursuant to § 522(f)(1).” *In re Brasslet*, 233 B.R. 177, 189 (Bankr. D.Me. 1999). Therefore, in the instant case it is the Debtor's burden to establish that the judicial lien, plus any other liens on the Property, plus the Debtor's exemption exceeded the Property's value.

The proper valuation for property in the instance of a motion to avoid a lien is the fair market value as of the date of the filing of the petition, in this case November 15, 2002. 11 U.S.C. § 522(a)(2). The fair market value is “the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.” *In re Gagnon*, 2005 WL 1331142 (2005), citing *U.S. v. Cartwright*, 411 U.S. 546, 551, 93 S.Ct. 1713, 1716 (1973). The best evidence of the fair market value of a property would be a sale, but in the absence of a sale the Court may rely upon other valuation methodologies.

The Debtor offered Leon Boudreau, an appraiser for thirty-five years, as an expert and he

was qualified as such. This expert testified that on the date of the appraisal, June 26, 2003, the Property was worth \$195,000.00. The appraisal occurred after the Petition Date. The expert reduced the fair market value of the Property by half of one percent for each month between the Petition Date and the appraisal date to determine the fair market value as of the Petition Date. He determined that the value of the Property on the Petition Date was \$185,000.00.

The Debtor's expert used the direct sales comparison approach as the basis for his opinion. The direct sales comparison approach entails a review of sales of generally similar-type properties that are compared to the subject property with adjustments then made to account for differences between the subject property and the comparison properties. Debtor' Exhibit 1, p. 16. The Debtor's expert used three residential properties in Townsend that he believed were most comparable to the Property, but recognized that none of the comparable properties contained the same amount of acreage as the Property.<sup>1</sup> He reviewed four land sales in Townsend to determine a value for the remaining acreage and appraised the subject Property's additional acreage at \$1,000.00 per acre.<sup>2</sup> In formulating his appraisal, the Debtor's expert told the Court that he assumed that the existing house would remain on the Property. His appraisal did not consider whether the Property was developable beyond its current use.

The Court accepts the value proposed by the Debtor's expert for the house and front lot only (the value for the 34.36 acres as of 11/15/02 minus the value of the "backland" equals the value of the house and front lot [ $185,000.00 - 33,000.00 = 152,000.00$ ]). The Court does not find the valuation for the undeveloped lot of land to be reliable, however. The Debtor's expert did

---

<sup>1</sup>Residential property #1 contained .96 acres; property #2 contained .46 acres; and property #3 contained .55 acres. The Property in question contained 34.36 acres. (Debtor's Exhibit 1, p. 20)

<sup>2</sup>The land sales: (1) 50 acres, 1,400 foot frontage, \$42,000.00, \$840.00 per acre; (2) 103.6 acres, no frontage, \$150,000, \$1,448.00 per acre; (3) 10 acres, 33 foot frontage, \$18,000.00, \$1,800.00 per acre; and (4) 7.6 acres, 50 foot frontage, \$20,000.00, \$2,632 per acre. (Debtor's Exhibit 1, Addendum D)

not consider the possibility of the Property being developed into a sub-division. Further, the Debtor's expert did not provide adequate explanation for assessing the value of the 33 acres of "backland" of the subject Property at \$1,000.00 per acre. At the very least, if the sales prices per acre of the four other Townsend parcels used by the Debtor's expert are averaged, the per acre price equals \$1,680.00 which exceeds the proposed valuation by \$680.00 per acre.<sup>3</sup> Moreover, based on the testimony of the Creditor's witness, the Court finds even this figure too low as it assumes that the undeveloped land should remain in that state when there are feasible alternatives. Even if the Creditor put in no testimony, the Court would not find the Debtor's evidence sufficient to meet the Debtor's burden on value. "In determining which appraisal figure to use for purposes of establishing value of exempt property, bankruptcy court is not bound by any figure in particular, but merely guided by them all." *In re Rehbein*, 49 B.R. 250, 253 (Bankr. D.Ma. 1985). Even the vacant land comparables of the Debtor's appraiser reflect that the land is worth much more than stated in the appraisal.

While the Creditor's witness regarding valuation of the subject Property was only found to be marginally qualified by the Court,<sup>4</sup> the Creditor's witness stated that he would pay between \$750,000.00 - \$825,000.00 for the Property. His valuation of the Property was based upon his observations of the Property after walking part of the land, and upon subdivision plans he created in light of these observations. He testified to at least two options for developing the Property. Under Option (1) two and one half acres of land would be utilized for a road approximately 2000 feet in length, providing seventeen developable lots in the rear of the property, and possibly one

---

<sup>3</sup> The Court does not have to find the exact amount of the value of the Property. It is enough if the Property is worth at least what the Creditor says is the amount of his claim plus the \$135,000.00 homestead exemption.

<sup>4</sup> Frank Gorman, the Creditor's "expert," is not an appraiser. He is, however, an experienced developer in the area. While he has not developed parcels in Townsend, he has developed several properties in the surrounding area over the last 29 years.

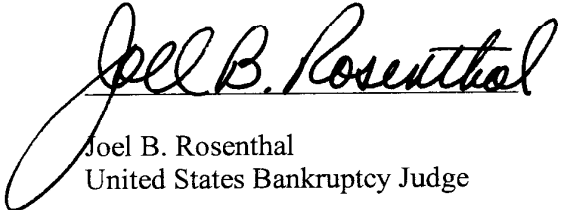
lot at the front of the property. Option (2) contemplated developing only seven or eight lots. The Creditor's witness explained that under either scenario the value he proposed was viable. The Court agrees that the amount this witness testified he would pay for the Property better reflects its value than the numbers presented by the Debtor's expert. The Court does not have to find the exact amount of the value of the Property. It is enough if the Property is worth at least more than what the creditor says is the amount of his claim, \$157,838.78, plus the \$135,000.00 homestead exemption. The Court finds that it is.

Conclusion

The Court finds that the Debtor did not meet his burden of proof under 11 U.S.C. § 522. Therefore, the Court finds that the judicial lien held by the Creditor does not impair the Debtor's exemption. The Court will grant the Creditor's Motion for Relief from the Automatic Stay, but stay the Creditor from action for forty-five (45) days to afford the Debtor an opportunity to sell or refinance the Property or to work out an arrangement with the Creditor.

Separate Orders will issue.

Dated: October 3, 2005

  
Joel B. Rosenthal  
United States Bankruptcy Judge